



EPA Authorizes Tribe to Run Its Own Water Quality Standards Program

Lac du Flambeau Band of Lake Superior Chippewa Indians
Lac du Flambeau, Wisconsin

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For more information

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The tribe's application and other documents may be viewed at:

Minocqua Public Library
415 Menominee St.
Minocqua

Lac du Flambeau Tribal Offices
2500 Highway 47 N.
Lac du Flambeau

EPA Region 5
77 W. Jackson Blvd.
Chicago

On the web
<http://www.epa.gov/region5/water/wqs5/wqstribes.htm>

EPA Indian policy

Under the U.S. Constitution and its own Indian policy, EPA works with federally recognized tribal governments as sovereign entities, not as political subdivisions of states or local governments. For more details on EPA Indian policy:
epa.gov/indian/1984.htm.

U.S. Environmental Protection Agency has granted authority to the Lac du Flambeau Band of Lake Superior Chippewa Indians to run its own water quality standards program on its Wisconsin reservation. EPA signed the Clean Water Act authorization on April 8, 2008.

Consistent with EPA's regulations, the application was submitted to the State of Wisconsin for comments on the tribe's assertion of authority to carry out the water quality standards program. The Lac du Flambeau authorization is for water standards programs only. The tribe will have to submit water quality standards developed as a result of this authorization to EPA for review and approval.

Clean Water Act and tribes

Currently EPA is responsible for carrying out provisions of the Clean Water Act within the Lac du Flambeau reservation. But the Clean Water Act allows tribes to run their own water programs in a manner similar to states. The first step in the process is to apply for authority to carry out a program, as the tribe has done here for the water quality standard program. After a tribe is authorized to carry out the water quality standard program, it then may develop standards, provide an opportunity to the public to comment on those standards, adopt the water quality standards under tribal law, and submit them to EPA for approval.

One of EPA's roles in this process is to review water quality standards developed by states and eligible Indian tribes. In developing water quality standards, an eligible tribe would look at appropriate uses for all surface water on the reservation and develop criteria to protect those uses.

A state or tribe running a water standards program is also authorized to grant or deny certification that a proposed discharge under federal license or permit does not violate its water quality standards. Downstream states or tribes may request that the EPA object to a permit proposed by an upstream jurisdiction if they believe the proposed activity would violate their water quality standards.

In 1987, Congress amended the water regulations to specify how eligible tribes could receive the same authorities as states. It also required EPA to establish a way to resolve unreasonable consequences that may result from a tribe and a state adopting different water quality standards on common bodies of water.

Forty tribes across the country have been authorized to run their own water programs including four tribes in the Great Lakes region – the Mole Lake Band of Sokaogon Chippewa in Wisconsin, and the Fond du Lac

Band of Chippewa, Grand Portage Band of Chippewa in Minnesota and now Lac du Flambeau Band of Lake Superior Chippewa Indians.

The Mole Lake Band was given approval for its own water program and quality standards in 1995-96, and EPA's decision was upheld by the Wisconsin District Court and affirmed by the 7th U.S. Circuit Court of Appeals.

Exercising tribal rights

A tribe's request to establish its own water quality program must demonstrate that the tribe:

- is federally recognized by the U.S. Department of Interior
- has a government carrying out substantial duties and powers
- has jurisdiction over the waters within its reservation
- has the capability to maintain the authorized water quality standards under the Clean Water Act

EPA regulations provide for the state to have the opportunity to review tribal assertions of authority over reservation waters. The provision is not a veto power but a way to identify competing jurisdictional claims and ensures that the tribe has authority to administer the program. EPA evaluates the jurisdictional claims. The regulations limit participation in that review to states. Local governments and potentially affected residents should comment through their state government, not directly to EPA.

When a tribe's program application is approved, it can then propose water quality standards, which require public notice and comment. EPA authority to approve or disapprove the standards extends only to the water quality standards program as specified in the Clean Water Act. Many issues of concern to affected residents – such as piers, boating and property values – may not come under EPA's authority under the Clean Water Act and are therefore not affected by the tribe's authorization for a water quality standards program

The Lac du Flambeau application

In October 2005, EPA Region 5 received a draft application from the Lac du Flambeau band for authorization to enforce its own water quality standards for all surface waters within the reservation. The reservation contains many lakes and water resources that support a variety of uses, including drinking water, fishing, boating and rice growing. EPA provided notice to local governments. A public information meeting on the tribe's Application was held February 15, 2006. A proposed Findings of Fact was developed to summarize findings about the tribe's jurisdictional authority over waters within its reservation. Comments on the tribe's application and on EPA's proposed Findings of Fact were received from the Wisconsin Department of Natural Resources and the public. The responses to these comments can be found on EPA's Website (see box on first page).